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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,808	07/05/2001	Cindy L. Price	659-867	9654

7590                    09/22/2005

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/899,808	PRICE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 June 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-18,20-37 and 51-54 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 15-18,20-37 and 51-54 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>062105:082405</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15 – 18, 28 – 31 and 36 – 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujioka et al. (US 6,056,732).

With reference to claim 15, Fujioka et al. (hereinafter “Fujioka”) discloses an absorbent garment comprising a front body panel having a length defined along a longitudinal direction and opposite side edges (figure 2) and a single fastening member comprising at least two independently movable and integrally formed tab members each having an engagement portion independently releasably and refastenably engaging said front body panel (figure 1), wherein the tab members extend laterally inward in the same direction from the same one of the said side edges of said body panel and wherein the tab members are offset from each other in the longitudinal direction, each of the engagement portions having an engagement length wherein the sum of the engagement lengths is at least about 20% of the front body panel length, wherein said fastening member comprises a portion fixedly secured to at least one of the front and rear body panels as shown in figures 1 and 2.

The examiner contends that a length defined along a longitudinal direction and opposite side edges may be considered as any length greater than 20% of what can be considered an engagement length.

With respect to claims 16 – 18 and 29 – 31, see the rejection of claim 15.

Regarding claim 28, Fujioka discloses an absorbent garment comprising a body panel having a length defined along a longitudinal direction and opposite side edges and a fastening member comprising a single carrier member defining at least two independently movable and integrally formed tab members extending laterally inward in the same direction from the same one of said side edges of the body panel and an engagement portion disposed on each of the tab members and wherein the tab members are offset from each other in the longitudinal direction, wherein the engagement portions independently releasably and refastenably engage the body panel, and wherein each of the engagement portions have an engagement length, wherein the sum of the engagement lengths is at least about 20% of the body panel length as set forth in the rejection of claim 15.

As to claim 36, see figure 1.

As to claim 37, see figure 2.

Claims 20, 25 – 28, 32, 35 – 37 and 51 – 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Brusky (US 5,531,731).

With reference to claim 20, Brusky discloses an absorbent garment comprising a body panel having a length defined along a longitudinal direction and opposite side edges (figure 2) and a fastening member comprising at least two independently

movable tab members each having an engagement portion independently releasably and refastenably engaging said body panel (figure 2), wherein the tab members extend laterally inward in the same direction from the same one of the said side edges of said body panel and wherein the tab members are offset from each other in the longitudinal direction, each of the engagement portions having an engagement length wherein the sum of the engagement lengths is at least about 20% of the body panel length (figure 2) wherein the fastening member comprises a carrier member (figure 5) having a length and further comprising a rear body panel (22) comprising a side edge having a length fixedly secured to the side edge of the front body panel along a seam (56) having a length as shown in figures 1 and 3.

Brusky shows a body panel on the left side of the figure in figure 2. The examiner contends that the based on the length of the tab members in figure 2, the sum of the engagement lengths of those tab members is at least about 20% of the body panel length. Likewise, the examiner contends that the process by which the seam is formed is considered a product by process limitation and only the end structure is given patentable weight.

As to claims 25 and 35, Brusky discloses the carrier member is fixedly secured to the rear body panel as set forth in col. 5, lines 9 – 27.

Regarding claims 26 and 36, Brusky discloses the front body panel comprising a pair of side portions each defining one of said opposite side edges and a landing member extending between the side portions, wherein the at least two engagement portions are releasably engaged with the landing member, and wherein the carrier

member is fixedly secured to the side portions of the front body panel as set forth in figures 1 – 3.

With reference to claims 27 and 37, Brusky discloses the front and rear body panels having substantially the same width as set forth in figure 2.

Regarding claim 28, Brusky discloses an absorbent garment comprising a body panel having a length defined along a longitudinal direction and opposite side edges and a fastening member comprising a carrier member defining at least two independently movable tab members extending laterally inward in the same direction from the same one of said side edges of the body panel and an engagement portion disposed on each of the tab members and wherein the tab members are offset from each other in the longitudinal direction, wherein the engagement portions independently releasably and refastenably engage the body panel, and wherein each of the engagement portions have an engagement length, wherein the sum of the engagement lengths is at least about 20% of the body panel length as set forth in the rejection of claim 14 and in figures 1 – 5.

As to claim 32, Brusky discloses a body panel comprising a front body panel, wherein the carrier member comprises a base portion wherein the tab members extend from the base portion, and wherein the base portion has a length (figures 2 and 5) and further comprising a rear body panel comprising a side edge having a length secured to one of said side edges of the front body panel along a seam having a length wherein the length of the carrier member is at least about 50% of the length of the seam as set forth in figures 1 – 5.

Regarding claims 51 – 54, see the rejection of claim 20 and figures 1 – 5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21 – 24, 29 – 31 and 33 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brusky (US 5,531,731).

The difference between Brusky and claims 21 – 24 and 33 – 34 is the difference in the lengths of the carrier members relative to the seam and the length of the side edge of the rear body panel.

It would have been obvious to one of ordinary skill in the art to modify the length of the carrier member in order to obtain the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art (i.e., a carrier member that has a length), discovering the optimum or workable ranges involves only a level of ordinary skill in the art.

The difference between Brusky and claims 29 – 31 is the provision that the sum of the engagement lengths is less than about 90%, between about 30 – 80%, or between about 40 – 60%, respectively.

It would have been obvious to one of ordinary skill in the art to modify the sum of the engagement lengths to provide the claimed ranges since it has been held that

where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only a level of ordinary skill in the art.

***Response to Arguments***

Applicant's arguments with respect to claims 15 – 18, 28 – 31 and 36 – 37 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the applicant's arguments regarding a seam that is formed separately from the fastening member, the examiner contends that the manner by which the seam is formed is considered a product by process limitation. Patentable weight is given only to the end structure.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a fastener that releasably engages the body panel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Further, the examiner contends that the fastener of Brusky is considered to be fixedly secured to the body panel via the interior tape member.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Primary Examiner  
Art Unit 3761